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8

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ROBERT LEE MILLER**  
622 Collyer Drive  
14 Redding, California 96003

15 **Registered Nurse License No. 219736**  
**Nurse Practitioner License No. 637**  
16 **Nurse Practitioner Furnishing License No. 637**

17 Respondent.  
18

Case No. 2007-193

OAH No.

**DEFAULT DECISION**  
**AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about January 18, 2007, Complainant Ruth Ann Terry, M.P.H.,  
21 R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing,  
22 Department of Consumer Affairs, filed Accusation No. 2007-193 against Robert Lee Miller  
23 ("Respondent") before the Board of Registered Nursing ("Board").

24 **Registered Nurse License**

25 2. On or about September 30, 1971, the Board issued Registered Nurse  
26 License Number 219736 to Respondent. The license expired on March 31, 2007, and has not  
27 been renewed.

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1                   **Nurse Practitioner License and Nurse Practitioner Furnishing License**

2                   3.       Prior to 1987, the Board issued Nurse Practitioner License Number 637 to  
3 Respondent. The license expired on March 31, 2007, and has not been renewed.

4                   4.       On or about January 25, 2007, Jessica L. Taylor, an employee of the  
5 Department of Justice, served by Certified and First Class Mail a copy of the Accusation  
6 No. 2007-193, Statement to Respondent, Notice of Defense, Request for Discovery, and  
7 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
8 with the Board, which was and is 622 Collyer Drive, Redding, California 96003. A copy of the  
9 Accusation, the related documents, and Declaration of Service are attached as **Exhibit A**, and are  
10 incorporated herein by reference.

11                  5.       Service of the Accusation was effective as a matter of law under the  
12 provisions of Government Code section 11505(c).

13                  6.       On or about February 6, 2007, the aforementioned documents were  
14 returned by the U.S. Postal Service marked "Return to Sender, Not Deliverable as Address,  
15 Unable to Forward." A copy of the envelope returned by the post office is attached hereto as  
16 **Exhibit B**, and is incorporated herein by reference.

17                  7.       Government Code section 11506 states, in pertinent part:

18                  "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
20 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
21 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22                  8.       Respondent failed to file a Notice of Defense within 15 days after service  
23 upon him of the Accusation, and therefore waived her right to a hearing on the merits of  
24 Accusation No. 2007-193.

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9. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibit A, finds that the allegations in Accusation No. 2007-193 are true.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Registered Nurse License Number 219736, Nurse Practitioner License and Furnishing License Number 637 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License Number 219736, and Nurse Practitioner License an Furnishing License Number 637, based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 2761(f) (conviction of a crime) and Code section 726 (sexual abuse or misconduct with a patient). The agency has jurisdiction to adjudicate this case by default.

## ORDER

**IT IS SO ORDERED** that Registered Nurse License Number 219736, and Nurse Practitioner License and Furnishing License Number 637, heretofore issued to Respondent, Robert Lee Miller, is revoked.

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1 Pursuant to Government Code section 11520(c), Respondent may serve a written  
2 motion requesting that the Decision be vacated and stating the grounds relied on within seven (7)  
3 days after service of the Decision on Respondent. The agency in its discretion may vacate the  
4 Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on November 12, 2007.

6 It is so ORDERED October 12, 2007

7 *LaTranene W. Tate*

8  
9 FOR THE BOARD OF REGISTERED NURSING  
10 DEPARTMENT OF CONSUMER AFFAIRS

11 Attachments:

12 Exhibit A: Accusation No.2007-193, Related Documents, and Declaration of Service  
13 Exhibit B: Copy of Envelope Returned by Post Office

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15 SA2006101196  
16 Default (kdg) 7/31/07  
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**BOARD OF REGISTERED NURSING**  
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-193

13 **ROBERT L. MILLER**  
622 Collyer Drive  
14 Redding, California 96003

**A C C U S A T I O N**

15 Registered Nurse License No. 219736

16 Respondent.

17  
18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the  
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
22 Affairs.

23 **Registered Nurse License**

24 2. On or about September 30, 1971, the Board issued Registered Nurse  
25 License Number 219736 to Robert L. Miller ("Respondent") which was in full force and effect at  
26 all times relevant to the charges brought herein and will expire on March 31, 2007, unless  
27 renewed. On or about April 24, 1985, the Board issued Nurse Practitioner License Number 637,  
28 which was in full force and effect at all times relevant to the charges brought herein and will

1 expire on March 31, 2007, unless renewed. On or about March 29, 1988, the Board issued Nurse  
2 Practitioner Furnishing License Number 637, which was in full force and effect at all times  
3 relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

#### 4 STATUTORY PROVISIONS

5 3. Section 2750 of the Business and Professions Code ("Code") provides, in  
6 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
7 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code  
8 section 2750) of the Nursing Practice Act.

9 4. Code section 2764 provides, in pertinent part, that the expiration of a  
10 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
11 against the licensee or to render a decision imposing discipline on the license. Under Code  
12 section 2811, subdivision (b), the Board may renew an expired license at any time within eight  
13 years after the expiration.

14 5. Code section 2761 states, in pertinent part:

15 The board may take disciplinary action against a certified or licensed nurse  
16 or deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct . . .

18 (f) Conviction of a felony or of any offense substantially related to the  
19 qualifications, functions, and duties of a registered nurse, in which event the  
record of the conviction shall be conclusive evidence thereof.

20 6. Code section 726 states, in pertinent part:

21 The commission of any act of sexual abuse, misconduct, or relations with  
22 a patient, client, or customer constitutes unprofessional conduct and grounds for  
disciplinary action for any person licensed under this division, under any initiative  
23 act referred to in this division and under Chapter 17 (commencing with section  
9000) of Division 3.

#### 24 COST RECOVERY

25 7. Code section 125.3 provides, in pertinent part, that the Board may request  
26 the administrative law judge to direct a licensee found to have committed a violation or  
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
28 and enforcement of the case.

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**FIRST CAUSE FOR DISCIPLINE**

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**(Criminal Conviction)**

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8           8.       Respondent is subjected to disciplinary action under Code section  
9 2761, subdivision (f), in that on June 6, 2005, in the Superior Court, County of Shasta, Redding  
10 Branch, in the matter entitled *People vs. Robert Lee Miller* (Super Ct., Shasta Cty., Redding  
11 Branch, 2005, Case No. 05-00662), Respondent was convicted on his plea of nolo contendere of  
12 violating Penal Code section 289.6, subdivision (A)(2) (sexual activity by facility provider with  
13 detained adult), a misdemeanor. Such conduct is substantially related to the qualifications,  
14 functions, or duties of a registered nurse.

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**SECOND CAUSE FOR DISCIPLINE**

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**(Sexual Abuse or Misconduct with a Patient)**

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17           9.       Respondent is subject to disciplinary action under Code section 726, on  
18 the grounds of unprofessional conduct, in that on or about December 14, 2004, while on duty as a  
19 registered nurse and employed at the Shasta County Jail, Redding, California, Respondent  
20 willfully engaged in sexual activity with a consenting adult who was confined at the facility.

20

**PRAYER**

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22           WHEREFORE, Complainant requests that a hearing be held on the matters herein  
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

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24           1.       Revoking or suspending Registered Nurse License Number 219736, issued  
25 to Robert L. Miller;

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2. Ordering Robert L. Miller to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/18/07

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant